

JUL 15 1996

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July 15, 1996

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Mr. William Caton
Acting Secretary
Federal Communications Commission
Room 222
1919 M Street, N.W.
Washington, D.C. 20554

Re: CS Docket No. 96-46: Implementation Of Section 302
Of The Telecommunications Act Of 1996
Open Video Systems

Dear Mr. Caton:

Enclosed for filing with the Commission please find an original and eleven copies of the Comments of Motion Picture Association of America, Inc. on Petitions for Reconsideration in the above-referenced proceeding. In accordance with the Public Notice dated March 22, 1996, two copies have been annotated as "Extra Public Copy."

If there are any questions regarding this matter, please communicate directly with the undersigned.

Sincerely,



Charles S. Walsh

cc: ITS
Larry Walke

10/11/96
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BEFORE THE

Federal Communications Commission RECEIVED

WASHINGTON, D.C. 20554

JUL 15 1996

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In The Matter Of

Implementation of Section 302
of the Telecommunications Act of 1996

Open Video Systems

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) CS Docket No. 92-46
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To: The Commission

**COMMENTS OF MOTION PICTURE ASSOCIATION
OF AMERICA, INC. ON PETITIONS FOR RECONSIDERATION**

The Motion Picture Association of America, Inc. ("MPAA"),¹ by its attorneys,
respectfully submits its comments in response to certain petitions for reconsideration filed
with respect to the Commission's Second Report and Order in the above-referenced
proceeding.²

¹MPAA member companies participating in these comments are Buena Vista Pictures Distribution, Inc.; Metro-Goldwyn-Mayer Inc.; Paramount Pictures Corporation; Sony Pictures Entertainment, Inc.; Turner Broadcasting System, Inc.; Twentieth Century Fox Film Corporation; Universal City Studios, Inc.; and Warner Bros., a Division of Time Warner Entertainment Company, L.P. Additional views of individual MPAA member companies may be expressed in separate submissions in this proceeding.

²Implementation of Section 302 of the Telecommunications Act of 1996, CS Docket No. 92-266, FCC 96-249 (rel. June 3, 1996)

DISCUSSION

The Commission's Second Report and Order adopts rules implementing the provisions of the Telecommunications Act of 1996 regarding the establishment of "open video systems" ("OVS"). A number of parties have filed petitions for reconsideration of certain of these rules. Among the petitioners are (i) Joint Parties³ Tele-TV, US WEST, and NYNEX, each of whom has asked the Commission to reconsider its decision applying the nondiscrimination requirements of Section 653(b)(1)(E) to OVS operator-affiliated video programming providers and (ii) Rainbow Programming Holdings, Inc. which has challenged the Commission's decision to extend the program access provisions of the 1992 Cable Act to OVS video programming providers. MPAA offers the following comments in response to these particular petitions.

First, the nondiscrimination provisions of Section 653(b)(1)(E) clearly are intended to ensure that OVS facilities provide an open and equivalent platform for the delivery of video programming to subscribers. In implementing this provision, the Commission has both the authority and the obligation to adopt rules that prevent OVS operators, either directly or through affiliated video programming providers, from tilting the platform so that subscribers (and potential subscribers) have less ready access to unaffiliated video programming providers (and the program services that they offer) than to affiliated providers.

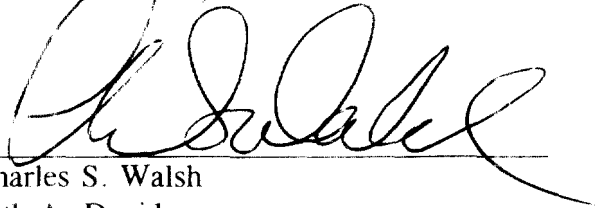
³Joint Parties are Bell Atlantic Telephone Companies and Bell Atlantic Video Services Company; BellSouth Corporation and BellSouth Telecommunications, Inc.; GTE Services Corporation and its affiliated domestic telephone operating companies and GTE Media Ventures, Inc.; Lincoln Telephone and Telegraph Company; Pacific Bell; and SBC Communications Inc. and Southwestern Bell Telephone Company.

Second, apart from the required broad scope of Section 653(b)(1)(E), it is crucial that the Commission also make clear that Section 616 of the Communications Act, which prevents multichannel video programming distributors from engaging in certain coercive and/or discriminatory practices with respect to the carriage of unaffiliated program networks, applies not only to OVS operators, but also to multichannel video programming distributors that utilize OVS facilities to delivery programming to subscribers. The language of Section 616 is unambiguous on this point but the Second Report and Order did not sufficiently communicate this important principle. In this regard, MPAA also wishes to express its disagreement with Rainbow's assertion that video program providers using OVS facilities to distribute programming to subscribers are not "multichannel video programming distributors." Rainbow's assertion is inconsistent with the expansive wording of the definition of "multichannel video programming distributor" found in Section 602(13) of the Communications Act. Moreover, the Commission does not need to narrow the definition in order to agree with Rainbow's basic argument. Under the principles of the DBS Order,⁴ the program access rules do not preclude an exclusive arrangement by a satellite program vendor that is affiliated with a cable operator and a non-cable MVPD (including an OVS-MVPD).

⁴Memorandum Opinion and Order on Reconsideration of the First Report and Order, MM Docket No. 92-265, 10 FCC Rcd 3105 (1994).

Respectfully submitted,

MOTION PICTURE ASSOCIATION
OF AMERICA, INC.

A handwritten signature in dark ink, appearing to read 'C. Walsh', written over a horizontal line.

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Dated: July 15, 1996

CERTIFICATE OF SERVICE

I, Eve J. Lehman, a secretary at the law firm of Fleischman and Walsh, L.L.P., hereby certify that a copy of the foregoing "Comments Of Motion Picture Association of America, Inc. On Petitions For Reconsideration" was served this 15th day of July, 1996, via first class mail, upon the following:

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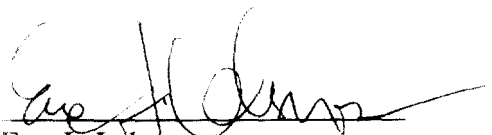
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